31 March 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**KERRYN MANNING**

**Date of hearing:** 17 March 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Judge Marilyn Harbison.

**Appearances:** Mr Michael Ross appeared on behalf of the Stewards.

Mr Lance Justice represented Ms Kerryn Manning.

**Charge:** Australian Harness Racing Rule (“AHRR”) 156(2)(a) states:

 A driver shall only apply the whip in a wrist only flicking motion whilst holding a rein in each hand with the tip of the whip pointed forward in an action which does not engage the shoulder.

**Particulars of charge:** The particulars of the charge being that during race 5 at Ballarat on Steam Punk over the concluding stages that Ms Manning failed to apply the whip with a wrist flicking motion only in an action which does not engage the shoulder.

**Plea:** Guilty

**DECISION**

1. Ms Kerryn Manning is a harness racing driver. On 16 September 2020 she was found guilty by Stewards of breaching Australian Harness Racing Rule 156(2)(a) which provides that:

“A driver shall only apply the whip in a wrist only flicking motion whilst holding a rein in each hand with the tip of the whip pointed forward in an action which does not engage the shoulder”.

1. Stewards found that in using her whip Ms Manning had engaged her shoulder. The Stewards suspended Ms Manning for two weeks. She has appealed against the severity of that sentence and against the finding of the Stewards. Stewards noted that it was her third offence and that applicable minimum penalty guidelines suggested a two week suspension for a third offence.
2. Ms Manning invited us to review the decision of the Stewards. In order to do so, we viewed a replay of the race. Having done so, we consider that the whip action of Ms Manning was more than a wrist only flicking motion. The initial whip use in the straight was mere flicking, but it morphed into a more vigorous action engaging her elbow and her shoulder. We dismiss the appeal against the guilty finding, and we will hear submissions on penalty.

**PENALTY**

1. Having heard the parties on the question of the two weeks penalty given to Ms Manning, we consider that the decision of the Stewards was open to them and correct in the circumstances. It was the fourth offence of Ms Manning. She received the penalty suggested in the minimum penalty guidelines.
2. We appreciate that Ms Manning was doing everything she could to win the race and that her offending was not deliberate. However, the offence is an entirely objective one. We disagree with the submission put on Ms Manning’s behalf that, due to the frequency of her driving, she should receive some leeway on penalty.
3. The penalty shall commence at midnight on 21 March 2021.

Mark Howard
Registrar, Victorian Racing Tribunal